Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GEORG MEINE, ROLF PUCHTA,
JUERGEN HOFFMEISTER

Appeal No. 1997-0328
Application No. 08/094,072

ON BRIEF

Before PAK, WALTZ, and KRATZ, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 8 through 27, which are all of the claims pending in this application.

BACKGROUND

The appellants' invention relates to a liquid detergent composition. According to appellants' brief (page 2), the composition is storable, has a high viscosity, furnishes a

washable foam, and has excellent cleaning ability. The high viscosity is allegedly achieved without the need for thickeners, high levels of surfactant or electrolytes. The composition in addition to water comprises four other components including a lower alcohol, a fatty alcohol sulfate, an alkyl polyglycoside, and soap in specified amounts and possesses a specified viscosity. A further understanding of the invention can be derived from a reading of exemplary claim 8, which is reproduced below.

> 8. A liquid detergent comprising water; and from about 2% to about 10% by weight of a fatty alcohol sulfate, from about 5% to about 25% by weight of an alkyl polyglycoside; from about 0.1% to about 9% by weight of a soap; and from about 3% to about 8% by weight of a lower alcohol, wherein said detergent has a viscosity of from about 400 mPaqs to about 3000 mPaqs.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hughes	4,507,219	Mar. 26, 1985
Roselle et al. (Roselle)	5,244,593	Sep. 14, 1993
		(filed Jan. 10, 1992)

Claims 8-27[1] stand rejected under 35 U.S.C. § 103 as being unpatentable over Roselle in view of Hughes.

OPINION

We have carefully reviewed the respective positions presented by appellants and the examiner. In so doing, we find ourselves in agreement with appellants that the applied prior art fails to establish a prima facie case of obviousness of the claimed subject matter. Accordingly, we will not sustain the examiner's rejection for essentially those reasons

[1] The examiner lists claims 8 through 18 as rejected under 35 U.S.C. § 103 as being unpatentable over Roselle in view of Hughes and separately refers to the rejection of claims 8 through 27 as presented in the prior office action paper No. 11 (answer, page 2). The only rejection present in the final rejection (paper No. 11) is a 35 U.S.C. § 103 rejection of claims 8 through 27 as being unpatentable over Roselle in view of Hughes with reasoning that appears substantially the same as that presented for the stated rejection of claims 8 through 18 at pages 2-6 of the answer. The answer (page 6) indicates that no new ground of rejection is present and neither of the two apparent separately stated rejections have been so identified. The brief addresses the single ground of rejection set forth in the final rejection. In view of the above, we regard the two apparently separately stated rejections in the answer to be the result of a reproduction error and consider the present appeal as involving only a single ground of rejection of all of appealed claims 8 through 27 under 35 U.S.C. § 103 as being unpatentable over Roselle in view of Hughes.

advanced by appellants, and we add the following primarily for emphasis.

According to the examiner, it would have been obvious to combine the teachings of Hughes and Roselle so as to ". . . meet the limitations of [a]pplicants' claims in their entirety" (answer, page 5). In this regard, the examiner is of the opinion that the ". . . broad range of surfactants . . ." (answer, page 4) taught by the applied patents would have rendered the claimed composition obvious as a matter of choosing ". . . the overlapping portion of the range disclosed by the reference
. . ." (answer, page 5). Moreover, the use of Hughes' neutralization system in Roselle would allegedly form soap in situ according to the examiner, and selecting ethanol amounts to arrive at the claimed viscosity are each deemed obvious to one of ordinary skill in the art by the examiner (answer, page 5).

As developed in appellants* brief, however, neither of the applied references teaches or suggests, alone or in combination, a composition having all of the particularized components, let alone the relative amounts thereof, which

comprise the claimed composition. The failure of either of the applied references to fully denominate a composition including both a fatty alcohol sulfate and an alkyl glycoside as claimed is noted by appellants (brief, pages 9-12). While Roselle discloses a plethora of surfactants which may be utilized, there is no suggestion in Roselle pointed to by the examiner that would lead one of ordinary skill in the art to pick out an alkyl glycoside and a fatty alcohol sulfate for combination in the relative amounts claimed herein in forming Roselle's desired colorless detergent composition. Hughes does not even disclose a fatty alcohol sulfate or an alkyl glycoside component that is to be used in a detergent composition.

In addition, the examiner has not pointed to where Roselle teaches employing a soap component in their composition. On this matter, we note that, the examiner, in essence, acknowledges that Roselle does not disclose the claimed soap component and viscosity of the claimed composition (answer, pages 4 and 5). Even if we were to accept the examiner's premise regarding the obviousness of using soap, via in situ formation, in Roselle based on the combined

references teachings, it is not seen how one of ordinary skill in the art would have been directed to also select the particular combination of surfactants claimed herein in the amounts recited together with a lower alcohol so as to obtain a liquid detergent with the claimed viscosity.

It is our view that the examiner has failed to provide any convincing reasons based on the applied prior art, or on the basis of knowledge generally available to one of ordinary skill in the art, as to why the teachings of the references should be combined in a manner so as to arrive at the claimed invention.

In reviewing the references relied on by the examiner, we find that it is difficult to discern on what basis the examiner reaches an obviousness conclusion with respect to the claimed invention. We note that the mere fact that the prior art could be modified as proposed by the examiner is not sufficient to establish a prima facie case. See In re Fritsch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

Accordingly, we agree with appellants that the examiner's rejection falls short of establishing a prima facie case of obviousness.

Since we find that the examiner has not established a prima facie case of obviousness, we need not reach the issue of the sufficiency of the evidence in the specification as allegedly demonstrating unexpected results. In re Geiger, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987).

CONCLUSION

To summarize, the decision of the examiner to reject claims 8 through 27 under 35 U.S.C. § 103 as being unpatentable over Roselle in view of Hughes is reversed.

REVERSED

CHUNG K. PAK Administrative Patent Judge	)
THOMAS A. WALTZ Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
PETER F. KRATZ Administrative Patent Judge	)

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